



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 03 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Gale Bradley, Site Leader
Dow Agrosiences, L.L.C.
305 N. Huron Avenue
Harbor Beach, Michigan 48441

Re: Finding of Violation
Dow Agrosiences
Harbor Beach, Michigan

Dear Ms. Bradley:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Dow Agrosiences, L.L.C. (you). We find that you have violated Section 112 of the Clean Air Act, 42 U.S.C. § 7412, at your Harbor Beach, Michigan facility.

We have several enforcement options under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3). These options include issuing an administrative compliance order, issuing an administrative penalty order, and bringing a judicial civil or criminal action.

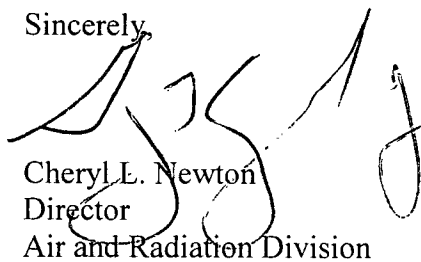
We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you the opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter

The EPA contact in this matter is Constantinos Loukeris. You may call him at (312) 353-6198 to request a conference.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

FDR

Enclosure

cc: Chris Hare, MDEQ
Michael Robinson, Warner Norcross & Judd LLP

United States Environmental Protection Agency Region 5

IN THE MATTER OF:)	
)	
Dow Agrosiences, L.L.C.)	FINDING OF VIOLATION
Harbor Beach, Michigan)	
)	EPA-5-09-MI-09
)	
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Dow Agrosiences, L.L.C. (Dow Agro or you) is violating Section 112 of the Clean Air Act (the Act), 42 U.S.C. § 7412. Specifically, Dow Agro is violating the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pesticide Active Ingredient Production at 40 C.F.R. Part 63, Subpart MMM as follows:

Regulatory Authority

1. On June 23, 1999, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient (PAI) Production at 40 C.F.R. Part 63, Subpart MMM (64 Fed. Reg. 33589).
2. The NESHAP for PAI Production, at 40 C.F.R. § 63.1360(a), provides that an affected source subject to this subpart is the facility-wide collection of PAI process units that process, use, or produce hazardous air pollutants (HAPs), and are located at a plant site that is a major source, as defined in section 112(a) of the Act.
3. The NESHAP for PAI Production, at 40 C.F.R. § 63.1361, defines an operating scenario, for the purposes of reporting and recordkeeping, as a description of a PAI process unit, including: identification of each wastewater point of determination (POD) and process vent, their associated emissions episodes and durations, and their associated level of control and control devices, as applicable; calculations and engineering analyses required to demonstrate compliance; and a description of operating and/or testing conditions for any associated control device.
4. The NESHAP for PAI Production, at 40 C.F.R. § 63.1368(f)(4), states that the Notification of Compliance Status report required under § 63.9(h) shall be submitted no

later than 150 calendar days after the compliance date and shall include operating scenarios.

5. The NESHAP for PAI Production, at 40 C.F.R. § 1368(h) (iii), provides that whenever a process change is made, or any of the information submitted in the Notification of Compliance Status report changes, the owner or operator shall submit revisions to any of the information reported in the original Notification of Compliance Status report with the next Periodic report.
6. The NESHAP for PAI Production, at 40 C.F.R. § 63.1361, defines wastewater as water that meets either of the conditions described in paragraph (1) or (2) of this definition and is discarded from a PAI process unit that is at an affected source.
7. The NESHAP for PAI Production, at 40 C.F.R. § 63.1361, defines point of determination (POD) as “each point where a wastewater stream exits the PAI process unit. Note to definition of “point of determination”: The regulation allows determination of the characteristics of a wastewater stream: at the point of determination; or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of Table 9 compounds as determined in §63.144 of subpart G of this part. Such changes include: losses by air emissions, reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams, and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.”
8. The NESHAP for PAI Production, at 40 C.F.R. § 63.1362(d), provides that the owner or operator of each affected source shall comply with the wastewater requirements of §§ 63.132 through 63.147, with the differences noted in paragraphs (d)(1) through (16) of this section for the purposes of this subpart.
9. The NESHAP for Organic HAPs from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, at 40 C.F.R. § 63.132(a)(1), requires the owner or operator to determine whether each wastewater stream requires control for Table 9 compounds by complying with the requirements in either paragraph (a)(1)(i) or (a)(1)(ii) of this section, and comply with the requirements in paragraph (a)(1)(iii) of this section.
10. The NESHAP for PAI Production, at 40 C.F.R. § 63.1365(c), requires the owner or operator of an affected source to demonstrate compliance with the process vent standards in § 63.1362(b) using the procedures described in paragraphs (c)(1) through (3) of this section.
11. The NESHAP for PAI Production, at 40 C.F.R. § 63.1365(c)(2), requires the owner or operator to calculate uncontrolled emissions according to the procedures described in paragraph (c)(2)(i) or (ii) of this section, as appropriate.

12. The NESHAP for PAI Production, at 40 C.F.R. § 63.1365(c)(2)(i)(D)(3), provides that while boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process condenser is properly operated is required for vessels that operate process condensers without secondary condensers that are air pollution control devices. The owner or operator must either measure the condenser exhaust gas temperature and show it is less than the boiling point of the substance(s) in the vessel, or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. Uncontrolled emissions are assumed to be zero under these conditions. The initial demonstration shall be conducted for all appropriate operating scenarios and documented in the Notification of Compliance Status report as specified in §63.1368(f).
13. The NESHAP, at 40 C.F.R. § 63.4(a)(1), provides that no owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part.

Facility Information

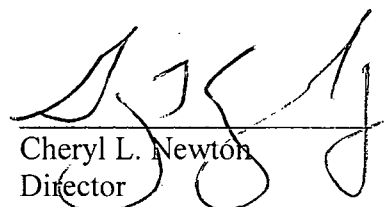
14. Dow Agro owns and operates a chemical plant in Harbor Beach, Michigan.
15. At the Harbor Beach facility, Dow Agro has a manufacturing operation that produces Spinosad-Pharmaceutical grade, Spinosad-Technical grade, and Spinosyn-J/L Intermediate, all pesticide active ingredients, within the meaning of the NESHAP for PAI Production. The Dow Agro facility in Harbor Beach, Michigan is a major source as defined in Section 112(a) of the Act. Dow Agro uses HAPs at various stages of its PAI manufacturing process. Thus, Dow Agro is an “affected source” as defined at 40 C.F.R. § 63.1360(a) and subject to the NESHAP for PAI Production at 40 C.F.R. Part 63, Subpart MMM.

Violations

16. Dow Agro failed to include the operating scenario for the Spinosad-Pharmaceutical grade in the Notification of Compliance Status Report. This is a violation of 40 C.F.R. § 63.1368(f)(4).
17. Dow Agro failed to identify the appropriate PODs as defined at 40 C.F.R. § 63.1361 for wastewater streams generated from the Spinosad-Pharmaceutical grade process. In addition, Dow Agro failed to determine whether each wastewater stream requires control for Table 9 compounds for the Spinosad-Pharmaceutical grade process. This is a violation of 40 C.F.R. §§ 63.1362(d) and 63.132(a)(1).

18. Dow Agro failed to perform an initial demonstration on all process condensers in the Spinosad-Pharmaceutical grade, Spinosad-Technical grade, and the Spinosyn J/L intermediate processes. This is a violation of 40 C.F.R. § 63.1365(c)(2)(i)(D)(3).

Date: 6/3/09


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Finding of Violation, No. EPA-5-08-MI-14, by Certified Mail, Return Receipt Requested, to:

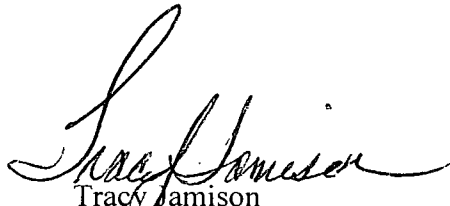
Gale Bradley, Site Leader
Dow Agrosiences, L.L.C.
305 N. Huron Avenue
Harbor Beach, Michigan 48441

I also certify that I sent copies of the Finding of Violation by first class mail to:

Chris Hare, District Supervisor
Michigan Department of Environmental Quality – Air Quality Division
Saginaw Bay District Office
503 N. Euclid Avenue
Bay City, Michigan 48706-2965

Michael L. Robinson, Esq.
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, Michigan 49503-2487

on the 3 day of June, 2009.


Tracy Jamison
Administrative Assistant
AECAB(MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 891926716